No. 17-647

# In The Supreme Court of the United States

ROSE MARY KNICK,

*Petitioner,*

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, et al.,

*Respondents.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit**

## BRIEF OF THE OHIO FARM BUREAU FEDERATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER


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## INTEREST OF AMICUS CURIAE[1]

The Ohio Farm Bureau Federation ("OFBF") is Ohio's largest general farm organization, with a core purpose of working together for Ohio's farmers and a mission of creating a partnership between farmers and consumers. OFBF is a federation of 86 county farm bureau organizations, representing all 88 counties in Ohio, and has more than 140,000 member families. OFBF constitutes the twelfth largest state farm bureau federation.

OFBF members own and rent substantial amounts of land throughout the state of Ohio and use it to produce virtually every kind of agricultural commodity found in that area of the country. Ohio's number one industry remains food and agriculture, and OFBF supports farmers of all types and sizes of farms in an industry that contributes billions of dollars each year to Ohio's economy. OFBF is strongly committed to protecting the private property rights preserved by the U.S. Constitution, as it has done for more than 90 years. OFBF regularly monitors and participates in pending cases, like this one, that significantly impact its members.

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[1] All parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus, its members, or its counsel made a monetary contribution intended to fund this brief's preparation or submission.

Farmers and their land are all too often the target of eminent domain activity and, unfortunately, subject to unconstitutional takings made without payment of just compensation. Thus, as farmers, OFBF's members generally have a strong interest in overturning this Court's decision in *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), which forces private landowners to run through a gauntlet of state court litigation to enforce their property rights as guaranteed under the U.S. Constitution. As ***Ohio*** farmers, OFBF's members' interest in overturning *Williamson County* is especially strong, because Ohio law does not recognize a claim of inverse condemnation and forces landowners to engage in an even more tortured, costly, and delay-prone state process to attempt to obtain just compensation for an unconstitutional taking of their property.

## SUMMARY OF ARGUMENT

The *Williamson County* state-litigation ripeness requirement has unintended impacts on property owners asserting Fifth Amendment just compensation claims. *Williamson County* shunts them to state court to first ripen their claims, resulting in piecemeal litigation, delay, cynical gamesmanship by the condemnor, and increased costs for attempting to vindicate one's property rights as compared to other constitutional rights. Moreover, through *Williamson County*'s interaction with the doctrines of claim and issue preclusion,

plaintiffs will likely find that ripening their claims in state court has a preclusive effect in federal court.

The Court's misguided *Williamson County* decision has severely injured farmers, especially in physical takings cases where a farmer must engage in years and years of litigation to obtain just compensation while the state physically occupies her most valuable asset—her land. Without a guarantee of attorney's fees, as there would be in federal court, a single farming family may find it difficult to afford representation to vindicate their rights in state court. *Williamson County* affects Ohio farmers particularly severely due to the multi-step, grueling mandamus process in place in Ohio. This multi-step process, and the cost that a farmer would incur as a result, means many farmers will never bring their claims through the courthouse door, and their rights will be trampled upon indefinitely. Although other briefs before this Court elaborate more fully on the inherent legal flaws in the *Williamson County* decision or the untenable results of this Court's *San Remo* decision, this brief highlights eminent domain litigation involving Ohio farmers—such as the decades of litigation related to *State ex rel. Doner v. Zody*, 958 N.E.2d 1235 (Ohio 2011) and *State ex rel. Coles v. Granville*, 877 N.E.2d 968 (Ohio 2007)—to illustrate the concrete harms the *Williamson County* state-litigation requirement has inflicted on private landowners. *See infra* § C.1-2 for a detailed discussion of the *Doner* and *Coles* cases.

The *Doner* example exposes the need for a federal forum to prevent eminent domain abuse by state

actors. In *Doner*, in accordance with the *Williamson County* ripeness requirement, over eighty farmers brought their federal takings claims in the Supreme Court of Ohio against the state for its frequent, severe and inevitably recurring flooding of their farms, which had substantially destroyed the value of the farms. After several years of litigation, the farmers received an extraordinary writ of mandamus (after being forced to meet a clear and convincing evidence standard) to compel the state to initiate appropriation proceedings to pay just compensation. The state did not comply, however, forcing the farmers to return to the Supreme Court of Ohio, reopen the mandamus case, and seek an extraordinary remedy of contempt (also under a clear and convincing evidence standard). The court held the state in contempt, and once again ordered the state to file the appropriation proceedings. The state then filed separate actions against each of the farmers and took every opportunity to further delay those proceedings, relitigating multiple issues from the mandamus action, and appealing the same issues in every case. Six years after the Supreme Court of Ohio issued its writ, only five out of fifty farm families had received their constitutional right to just compensation. By then eight of the farmers had died without receiving a penny in just compensation.

Only after the remaining farmers brought First and Fifth Amendment retaliation claims (a straightforward Fifth Amendment claim was unavailable due to *Williamson County*) in federal court against the state and its officials did their right to just

compensation get resolved. Phillis, Michael, *Flooded Landowners Sue Ohio for Retaliating Against Them* (April 14, 2017), *available at* https://law360.com/articles/913585. Cases like *Doner* embody why members of this Court question the state-litigation requirement and have argued that it should be reexamined. *See Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., dissenting from denial of certiorari); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 348-52 (2005) (Rehnquist, C.J., concurring).

Where *Doner* highlights the harms of closing the federal courthouse doors to landowners, the *Coles* case reflects the tension between federal and state courts created by the *Williamson County* state-litigation requirement. In *Coles*, Ohio farmers turned to the federal courts when the Ohio state-court mandamus process proved unresponsive, inefficient, and costly. In that case, state actors had intentionally delayed initiating appropriation proceedings in a fifteen-year struggle over the state actors' taking of private property for a bike path. While the state actors' conduct "stunned and appalled" the federal district court, the court found that a "wait-and-see approach" would be appropriate under *Williamson County*—even though the dispute had been "percolating and bubbling away for 15 years." Applying *Williamson County*, the Sixth Circuit agreed with the district court that despite fifteen years of a physical taking without just compensation, *Williamson County* required a "wait-and-see approach." Thus, the farmers remained without recourse in federal

courts for their federal takings claims, and were forced to proceed in state court where, like *Doner*, the state actor went after the landowners, one at a time, to relitigate numerous issues from the mandamus case in each and every separate appropriation action.

These cases exemplify the morass *Williamson County* has caused by relegating the basic human right to just compensation for government seizures of private property to an inferior status, where they must be handled by state courts through state procedures. *See* Br. Am. Cur. for the American Farm Bureau Federation and National Cattlemen's Beef Association, in which amicus here concur. For over 116 years, after the ratification of the Fourteenth Amendment, the just compensation clause was not relegated to inferior status. Respectfully, the time has come to return the just compensation clause to its rightful place—co-equal with the other basic rights recognized in the United States Constitution. Citizens like Ohio farmers deserve this Court restoring this basic right to its rightful place.

As such, the *Williamson County* ripeness requirement should be overruled.

## ARGUMENT

### A. Contrary to the Purpose and Intent of 42 U.S.C. § 1983, *Williamson County* Leaves Enforcement and Protection of the Fifth Amendment to States and Creates an Unnecessary Procedural Morass.

Generally, no requirement mandates that a litigant exhaust any state procedure prior to asserting a constitutional claim under 42 U.S.C. § 1983 in federal court. In fact, "this Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position. . . ." *Patsy v. Bd. of Regents*, 457 U.S. 496, 500-01 (1982). The very purpose of § 1983 was "to 'throw open the doors of the United States courts' to individuals who were threatened with, or who had suffered the deprivation of constitutional rights." *Id.* (quoting Cong. Globe, 42d Cong., 1st Sess., 376 (1871)). By enacting § 1983, Congress chose to "interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Id.* (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)).

Absent *Williamson County*, if a state actor takes property without providing just compensation in violation of the U.S. Constitution, a landowner, or group of landowners, would be able to assert an inverse condemnation claim in federal court under § 1983. A single federal court would be tasked to first decide, under a preponderance of the evidence standard, whether there had been a taking. *Wilson v. United States*, 350 F.2d 901, 908 (10th Cir. 1965). Then, the same court

would determine the extent of the taking. Finally, the court would oversee jury trials to determine just compensation. *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 711 (1999) (finding that a plaintiff is entitled to a jury trial for a § 1983 action seeking redress for an uncompensated taking). In other words, a single judge, under a single continuous case number, would preside over the entirety of the landowners' case, ensuring consistency, a fair application of the law of the case, and normal case management procedures to prevent delay. *See id.* This system leaves the injured party, the landowner, in the driver's seat as the plaintiff. Finally, a prevailing landowner would be entitled to attorney's fees. 42 U.S.C. § 1988(b).

However, the *Williamson County* court held that property rights are somehow different than or inferior to other rights, and owners must seek and be denied just compensation in state court prior to suing for an unconstitutional taking in federal court. *Williamson Cty. Reg'l Planning Comm'n*, 473 U.S. at 194-96. The disparate impacts and unintended consequences of what initially appeared to be a relatively straightforward ripeness requirement, however, have become clear in the more than thirty years since the *Williamson County* decision. Under *Williamson County*, a plaintiff who wishes to assert her federal takings claim in federal court will be forced to undergo a two-step process even under the most perfect of circumstances: first, she must ripen her claim in state court, and, if denied just compensation, then she must litigate the unconstitutional taking in federal court.

The *Williamson County* state-litigation requirement has resulted in a procedural morass that condemnors exploit for gamesmanship purposes. For example, when a plaintiff files her takings claim in state court in order to ripen the claim, she faces the risk that the defendant will remove the matter to federal court based on federal question jurisdiction, leaving both the plaintiff and the courts perplexed. *See, e.g.*, *Sandy Creek Investors, Ltd. v. City of Jonestown*, 325 F.3d 623, 625 (5th Cir. 2003) (holding that district court lacked jurisdiction to consider unripe removed federal takings claim). An additional detrimental effect of the *Williamson County* state-litigation ripeness requirement is that a plaintiff might be forced to proceed in federal court and state court simultaneously. For example, there are no ripeness requirements for public use, unreasonable seizures, and un-subsumed due process claims related to an uncompensated taking, so a plaintiff may be forced to ripen a just compensation takings claim in state court while simultaneously litigating the related ripe claims in federal court. *See Carole Media Ltd. Liab. Co. v. N.J. Transit Co.*, 550 F.3d 302, 309 (3d Cir. 2008) ("*Williamson County* does not apply to claims under the Public Use Clause."); *Brown v. Metro. Gov't of Nashville & Davidson Cty.*, No. 11-5339, 2012 U.S. App. LEXIS 14553, at *11 (6th Cir. Jan. 9, 2012) ("the *Williamson County* ripeness framework for Takings Clause claims does not apply to Fourth Amendment claims"); *Bowlby v. City of Aberdeen*, 681 F.3d 215, 226 (5th Cir. 2012) (declining to apply *Williamson County* to a procedural due process claim).

Moreover, due to the doctrines of claim and issue preclusion, piecemeal litigation is likely the least of the plaintiff's concerns. Following this Court's ruling in *San Remo*, the Full Faith and Credit statute often prohibits federal courts from hearing a federal takings claim after a plaintiff unsuccessfully litigates for just compensation in state court. *San Remo Hotel, L.P. v. City & Cty. of S.F.*, 545 U.S. 323, 336 n.16 (2005); *Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409, 1410 (2016) (Thomas, J., dissenting from denial of cert.) ("*San Remo Hotel* dooms plaintiffs' efforts to obtain federal review of a federal constitutional claim even after the plaintiffs comply with *Williamson County*'s exhaustion requirement."). "The rules thus operate to ensur[e] that litigants who go to state court to seek compensation [under *Williamson County*] will likely be unable later to assert their federal takings claims in federal court" due to *San Remo*. *Arrigoni Enters., LLC*, 136 S. Ct. at 1411 (Thomas, J., dissenting from denial of cert.) (internal citation marks omitted). Thus, by ripening her federal claim in state court, a plaintiff erects a potentially preclusive barrier to federal court review of her federal takings claim.

Therefore, following *Williamson County*, even assuming a perfect state process, a plaintiff is almost guaranteed multiple actions, longer litigation, and procedural confusion. When there is a less than perfect state process, however, true injustice results. Instead of allowing a federal court to "interpose" itself "between the States and the people" to guard "the people's federal rights," *Patsy*, 457 U.S. at 500-01 (quoting

*Mitchum*, 407 U.S. at 242), the *Williamson County* scheme entrusts state courts to do so, even when it involves other state actors who have already unconstitutionally taken property without paying just compensation. If state courts fail to promptly stop or punish such behavior, a federal court's hands are tied by *Williamson County*. Even when federal courts observe unreasonable delay in state-court litigation or eminent domain abuse, *Williamson County* forces them to take a "wait-and-see" approach and hope that the state courts will resolve the matter. *Williamson County* leaves open opportunity for abuse of power and a disparate impact for plaintiffs who may not have the time and resources to navigate the *Williamson County* labyrinth.

### B. The Potential Harms of *Williamson County* Are Not "Potential" in Ohio and Other States That Do Not Recognize a Claim for Inverse Condemnation.

In Ohio, and in other states that do not recognize a claim for inverse condemnation, the full extent of the detrimental impacts of the *Williamson County* state-litigation requirement is evident. To seek just compensation for an unconstitutional taking of private property, Ohio law requires a landowner to file an action for an "extraordinary" writ to force a condemnor to initiate a separate appropriation action to determine the value of the taken property. *State ex rel. Doner*, 958 N.E.2d at 1247. Under the extraordinary writ standard, the landowner must prove that a taking

has occurred by "clear and convincing evidence," which is a much higher standard than the "preponderance of the evidence" standard that would have otherwise been applied in federal court. *Id.* ("Parties seeking extraordinary relief bear a more substantial burden in establishing their entitlement to this relief."). Notably, a landowner who fails to meet the "clear and convincing evidence" standard could be barred from later pursuing his takings claim under a "preponderance of the evidence" standard in federal court due to claim and issue preclusion. *See San Remo Hotel, L.P.*, 545 U.S. at 347 ("we are not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum").

Ohio's eminent domain procedures necessarily require multiple actions and result in piecemeal litigation. If the extraordinary writ is granted, the condemnor starts a second action (often in front of a different judge) to determine the value of the appropriation. *State ex rel. Levin v. City of Sheffield Lake*, 637 N.E.2d 319, 322 (Ohio 1994) ("mandamus lies to determine if property has been appropriated and to compel initiation of statutory proceedings"). Therefore, at a minimum, to vindicate one's Fifth Amendment rights, a landowner is forced to litigate two separate actions—the mandamus action and the appropriation proceeding. *See id.*

Moreover, once the landowner is granted the writ, the mandamus case is closed and the landowner no longer has control over the eminent domain action. Instead, Ohio law allows the condemnor to prepare and

initiate appropriation proceedings under a complaint and description of the taking as drafted by the condemnor. Ohio Revised Code § 163.05. After the writ has been granted, there is no active case or judicial oversight of the condemnor in its preparation and initiation of appropriation proceedings, and, as a result, condemnors do not move quickly. *See, e.g.*, *State ex rel. Doner v. Zehringer*, 982 N.E.2d 664, 664 (Ohio 2012). Although landowners often achieve a writ of mandamus in a group, condemnors file separate appropriation proceedings for each landowner, forcing landowners to litigate their claims (and any evidentiary or property law issues shared by the group) separately. *See id.*

Further complicating matters, Ohio law limits what defenses and issues a landowner may raise in response to an appropriation petition; if issues arise in the appropriation proceeding beyond the issue of just compensation, the landowner must initiate yet another action to resolve those matters. *Cincinnati v. Smith*, 29 Ohio App. 2d 172, 173, 279 N.E.2d 638, 639 (Ohio Ct. App. 1971) ("if the landowner wanted to raise questions other than a determination of the amount of compensation and damages to which he is entitled, such questions would have to be determined in a separate action to enjoin the proceeding"). Additionally, there is no guarantee that a landowner will be able to recover attorney's fees for either the mandamus action or the appropriation action, even if the landowner prevails. *City of All. v. Whinery*, Case No. 2000CA00137,

2000 Ohio App. LEXIS 5252, at *11 (Ohio Ct. App. Nov. 13, 2000).

Shunting landowners to Ohio state court means that many landowners lacking the wherewithal to vindicate their Fifth Amendment constitutional rights give up. Unless the value of the appropriated property is exceedingly high or unless there are multiple landowners subject to the same taking who can combine resources for the initial mandamus proceedings, Ohio's multi-step process—coupled with the lack of any guarantee of attorney's fees—makes litigation in Ohio courts too costly and precludes many landowners from seeking just compensation at all. In these instances, the state continues to trample on the constitutional right to just compensation. The Ohio farmers that do not give up then face the devastating impacts of trying to run the *Williamson County* gauntlet.

### C. *Williamson County* Has a Particularly Devastating Impact on Ohio Farmers.

The *Williamson County* state-litigation ripeness requirement disproportionally impacts farmers. Many farmers are "land rich and cash poor." *Broaddus v. United States Army Corps of Eng'rs*, 380 F.3d 162, 172 n.9 (4th Cir. 2004) (describing family farmers as "land rich but cash poor" and noting that their "land is committed to an ongoing use as part of the farming enterprise"). In an uncompensated physical takings case, the government occupies the farmer's most valuable asset—without having paid compensation—for the

duration of the eminent domain litigation. Under *Williamson County*, the farmer must fund costly piecemeal litigation first in state court and then in federal court. And without any guarantee of attorney's fees for the state court litigation, a single farmer may not be able to find representation to vindicate her rights. While piecemeal litigation is undesirable for any litigant, the cost and delay of multiple lawsuits—through either simultaneous or consecutive state and federal court actions—can be devastating for farmers deprived of the source of their livelihood.

Ohio's eminent domain laws compound these issues for Ohio farmers. Ohio farmers forced to assert their federal takings claims in state court are subjected to Ohio's heightened burden of proof, two-step mandamus process, and condemnor-friendly presumptions and are thereafter barred from asserting their claims in federal court under the federal standards due to the doctrines of issue and claim preclusion. The *Doner* case and the *Coles* case best illustrate the negative impacts that *Williamson County* has had on Ohio farmers.

### 1. *State ex rel. Doner v. Zody*

The *Doner* case is but one example of the difficulties caused by the *Williamson County* state-litigation requirement and the devastating impact it has had on Ohio farmers' ability to assert their Fifth Amendment rights. In *Doner*, over 80 farmers in Mercer County, Ohio brought suit in 2009 against the Ohio

Department of Natural Resources ("ODNR"), asserting that ODNR took their land by its frequent, severe and inevitably recurring flooding of thousands of acres of farmland as the result of a redesigned spillway. *Doner*, 958 N.E.2d at 1239. ODNR had been warned repeatedly by landowners and local government officials that the proposed redesign of the spillway would cause severe flooding to land downstream, but ODNR "made a conscious choice to disregard that foreseeable risk in favor of recreational users of the lake and landowners on the southern end of the lake." *Id.* at 1250. Due to ODNR's actions, the farmers' properties "flooded more frequently, over a larger area, for longer periods of time and with greater resulting damage, including crop loss, the deposit of silt, sand, stone, and other debris, drainage-tile failure, soil compaction, and the destruction of trees, bushes, and shrubs." *Id.* at 1241. Such flooding substantially destroyed the value of the farms. *Id.* at 1248, 1252.

After nearly two years of extensive discovery (requested by the state), substantial briefing, and the presentation of evidence, the Supreme Court of Ohio unanimously granted the writ of mandamus, compelling ODNR to immediately commence appropriation proceedings. *Id.* at 1252. The Supreme Court of Ohio denied the landowners' request for attorneys' fees. *State ex rel. Doner v. Logan*, 131 Ohio St. 3d 1455, 961 N.E.2d 1134 (Ohio 2012).

ODNR intentionally delayed filing the appropriation actions. Nine months after that order was issued, ODNR had filed only two of the over fifty compensation

cases that needed to be filed. *State ex rel. Doner*, 982 N.E.2d at 664. Because Ohio law does not afford for ongoing judicial oversight of the relief granted by the writ, i.e., the condemnor's filing of the appropriation proceedings, ODNR's delay tactics forced the farmers to reopen the mandamus case and file a motion to show cause as to why ODNR should not be held in contempt of the Supreme Court of Ohio's writ of mandamus. *Id.* The Supreme Court of Ohio held ODNR in contempt and ordered ODNR to file all appropriation cases within 120 days. *Id.*

Once Ohio law granted ODNR control of the litigation, ODNR split apart the group of farmers that had been granted the writ, and forced them to litigate their appropriations proceedings separately. This splintering drove up the cost of litigation, required each landowner to fight anew the legal battles their neighbors had won in separate trials, and resulted in delay.[2] *See, e.g.*, *State v. Ebbing*, 28 N.E.3d 682 (Ohio Ct. App. 2015); *State v. Knapke*, 33 N.E.3d 528, 541 (Ohio Ct. App. 2015); *State, Dep't of Nat. Res. v. Mark*

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[2] As noted above, Ohio's eminent domain statutes provide no process for addressing eminent domain abuses within an appropriation proceeding. *See Cincinnati v. Smith*, 29 Ohio App. 2d 172, 173, 279 N.E.2d 638, 639 (Ohio Ct. App. 1971). Thus, when ODNR refused to make required deposits to secure their possession of the farmers' property, the *Doner* farmers were forced to obtain two more additional writs compelling the state to do so. *See, e.g.*, *Ohio ex rel. Karr Revocable Tr. v. Zehringer*, No. 10-13-2018, 2014-Ohio-2241, ¶ 36, 2014 Ohio App. LEXIS 2186 (Ohio Ct. App. May 27, 2014). This provides just another example of how *Williamson County* forces landowners into state processes rife with the potential for delay and eminent domain abuse.

*L. Knapke Revocable Living Tr.*, 28 N.E.3d 667 (Ohio Ct. App. 2015); *State, Dep't of Nat. Res. v. Thomas*, 79 N.E.3d 28 (Ohio Ct. App. 2016). Litigating against each farmer in a separate action permitted ODNR to relitigate the same issues in each jury trial and delay subsequent trials by appealing each verdict, often to the Supreme Court of Ohio. *Dep't of Nat. Res. v. Ebbing*, 39 N.E.3d 1270 (Ohio 2015); *Ohio Dep't of Nat. Res. v. Knapke*, 41 N.E.3d 447 (Ohio 2015); *Dep't of Nat. Res. v. Knapke Tr.*, 37 N.E.3d 1249 (Ohio 2015); *Dep't of Nat. Res. v. Thomas*, 72 N.E.3d 658 (Ohio 2017). Litigating each case one-by-one also allowed ODNR to "shift[] strategies" by raising new issues in each subsequent jury trial, and then appealing those new issues as well. *Thomas*, 79 N.E.3d at 46. The years of machinations, delays with each successive appeal of the jury verdicts, and deprivation of just compensation ended for eight of the farmers who died before ever receiving a penny for state's flooding of their farms. Complaint, *Kuhn v. Zehringer*, Case No. 2:17-cv-00315-MHW-EPD, ECF No. 1, ¶ 16 (August 13, 2017 S.D. Ohio).

All of these issues could have been avoided if the federal courthouse doors had been open to the *Doner* farmers to vindicate their Fifth Amendment rights from the start. The *Doner* farmers should have been permitted to utilize § 1983 to bring a single federal action for a Fifth Amendment violation under § 1983, where they would remain plaintiffs throughout, their claims would remain under the constant supervision of a single federal judge, and the law of the case would require fair and consistent treatment to them all.

These problems exemplify the constitutional infirmities of *Williamson County*.

The end of the *Doner* litigation only highlights the importance of federal courts in resolving unconstitutional takings by a state actor. After only five cases were tried and only five families received just compensation after roughly eight years of state court litigation, the farmers sued ODNR in federal court, alleging First and Fifth Amendment retaliation claims. While the *Williamson County* state-litigation requirement prevented the farmers from asserting their Fifth Amendment just compensation claims in federal court, it served as no bar to their retaliation claims once the continuing conduct of the state rose to the extreme-level of conduct necessary for such retaliation claims. Demonstrating the important role that federal courts must play in vindicating property rights, the dispute between ODNR and the farmers resolved shortly after the landowners were finally let in the federal courthouse doors. It is unfortunate, and improper, that the farmers were not let in those courthouse doors years earlier.

### 2. *State ex rel. Coles v. Granville*

The *Coles* case is yet another example of *Williamson County*'s procedural morass in Ohio. In *Coles*, a group of farmers and other landowners in Erie County, Ohio brought suit against the park district for taking approximately six miles of private property to build a bike path but refusing to pay just compensation for

that taking. *State ex rel. Coles*, 877 N.E.2d 968. The farmers first filed a civil-rights action in federal district court in 2003, arguing that the park district violated their Fifth and Fourteenth Amendment rights when it invaded and took complete control and possession of their land nearly four years earlier. *Coles v. Granville*, No. 3:03 CV 7595, 2005 U.S. Dist. LEXIS 893 (N.D. Ohio Jan. 24, 2005). Two and a half years later, the district court dismissed the case. *Id.* at *4. The Sixth Circuit affirmed the dismissal in 2006, holding that the takings claim was unripe. *Coles v. Granville*, 448 F.3d 853, 865 (6th Cir. 2006). The Sixth Circuit found that Ohio had a "reasonable, certain, and adequate provision for obtaining compensation," therefore, the farmers had to go through the state-court mandamus process before bringing their federal claims in federal court. *Id.* at 861.

In 2006, the farmers turned to state court to vindicate their constitutional rights by requesting a writ of mandamus to compel appropriation proceedings. *State ex rel. Coles v. Granville*, 877 N.E.2d 968 (Ohio 2007). The Supreme Court of Ohio granted the writ of mandamus in 2007 (again under a clear and convincing evidence standard). *Id.* at 978. The farmers hoped that the nearly ten years of litigation was drawing to a close, that the park district would diligently proceed with the steps necessary to appropriate the farmers property, and that the park district would pay the farmers the long-overdue just compensation to which they were entitled. *See* Motion for Contempt filed Dec.

4, 2009, *State ex rel. Coles v. Granville*, Case No. 2006-1259, 10 (Ohio).

The park district, however, delayed filing the appropriation proceedings. *Id.* Over a year after the writ had been granted, the park district still had not filed any appropriation proceedings. Due to the park district's inaction, the farmers returned to federal court to seek relief for their federal takings claim. Complaint, *Coles v. Granville*, Case No. 3:08-cv-02968-JGC, ECF No. 1 (N.D. Ohio 2008). In the federal action, the park district repeatedly denied the farmers' ownership over their property—attempting to relitigate the issue—and criticized the Supreme Court of Ohio's decision granting the farmers a writ of mandamus. *Id.* at ECF No. 15 at ¶¶ 13-17; ECF No. 22 at 5 n.2, 12, 14. Only in response to the summary judgment briefing in the federal court action and in an effort to moot the federal takings claim, the park district filed appropriation proceedings in 2009. *See* Motion for Contempt, *State ex rel. Coles v. Granville*, Case No. 2006-1259, 18 (Ohio Dec. 4, 2009).

In the appropriation proceedings, the park district repeatedly took positions contrary to the Supreme Court of Ohio's decision granting the writ of mandamus. *Id.* at 19. For example, despite the Supreme Court's ruling granting the farmers the writ, the park district claimed that the farmers were not entitled to any just compensation and forced the farmers to relitigate their established right to just compensation. *Id.* As a result of the separate mandamus and appropriation actions required under Ohio law, the farmers were

forced to reopen the mandamus action in the Supreme Court of Ohio and file a motion to hold the park district in contempt of the Supreme Court of Ohio's order granting the writ of mandamus. *Id.*

In light of the farmers' effort to obtain the extraordinary sanction of contempt in state court, the federal court stayed the federal proceedings pending action from the state court. *Coles v. Granville*, Case No. 3:08-cv-02968-JGC, ECF No. 50 (N.D. Ohio 2008). The federal court, however, noted its clear amazement at the conduct of the park district:

> I want to say as candidly and as forthrightly as I can, that ***I am stunned and appalled*** at the failure of the Metroparks board to have acted with far greater dispatch in filing the appropriation proceeding. ***This dispute has been percolating and bubbling away for 15 years.*** Plaintiffs represent that they have spent over a million dollars trying to get that to which the law quite clearly entitles them, just compensation.

*Id.* (emphasis added). The farmers appealed the district court's order indefinitely staying their civil rights action. The Sixth Circuit affirmed, and cited the *Williamson County* standard to find that the district court properly "took a wait-and-see approach." Order, *Coles v. Granville*, Case No. 10-3259, ECF No. 25 at 2 (6th Cir. June 4, 2010). Even though the court was "stunned and appalled" by the park district's actions and its fifteen-year ongoing battle against just compensation, its hands were tied by *Williamson County*.

Thus, Ohio farmers are barred from entering the federal courthouse doors at the outset to assert their Fifth Amendment rights, and then are barred from entering the federal courthouse doors after a state acknowledges but refuses to timely vindicate those Fifth Amendment rights—all because of *Williamson County*.

### D. There Is No Plausible Basis for Applying a Ripeness Requirement to Fifth Amendment Takings Claims Alone.

Courts should not apply a state-litigation ripeness requirement to Fifth Amendment takings claims. As set forth above, there is generally no requirement that a litigant assert their constitutional claims under § 1983 in state court before seeking relief from a federal court. *Patsy*, 457 U.S. at 500-01. Thus, "*Williamson County* has downgraded the protection afforded by the Takings Clause to second-class status." *Arrigoni Enters., LLC*, 136 S. Ct. at 1411 (Thomas, J., dissenting from denial of cert.). There is no reasonable justification for treating Fifth Amendment takings claims any differently from other constitutional claims.

The *Williamson County* court initially reasoned that the ripeness requirement was appropriate because "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State. . . ." 473 U.S. at 195. Yet, a taking of private property without

just compensation is complete when the property is taken and just compensation is not paid by the condemnor. Indeed, this Court recognizes the just compensation requirement as "self-executing." *United States v. Clarke*, 445 U.S. 253, 257 (1980). Just compensation need not be denied by a court, let alone a state court, prior to a claim becoming ripe.

In light of the inequitable[3] impacts that the *Williamson County* state-litigation requirement has had on farmers—and Ohio farmers specifically—it must be overruled. *See also* Br. Am. Cur. for the American Farm Bureau Federation and National Cattlemen's Beef Association. Of overarching concern is the condemnors' abuse of the state-court mandamus process with no federal judicial oversight, including the procedural gamesmanship, incessant relitigation of issues, and unnecessary delay.

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[3] Beyond the lack of any justifiable reason to relegate property rights to an inferior status as compared to other rights, *Williamson County*'s inequitable outcomes violate the very nature of the just compensation requirement. *See United States v. Fuller*, 409 U.S. 488, 490 (1973) (that "[t]he constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from technical concepts of property law") (internal citations omitted); *see also United States v. Lee*, 360 F.2d 449, 452 (5th Cir. 1966) ("'Just compensation' invokes the equitable powers of the court").

## CONCLUSION

In sum, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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